

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

RECEIVED
Jul 11 3 52 PM '01
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**Complaint on Sunday
and Holiday Collections**

Docket No. C2001-1

**DOUGLAS F. CARLSON
MOTION TO COMPEL THE UNITED STATES POSTAL SERVICE
TO RESPOND TO INTERROGATORIES DFC/USPS-50 & -53**

July 7, 2001

I move to compel the Postal Service to respond to interrogatories DFC/USPS-50 and -53, which I filed on June 21, 2001.¹ The Postal Service objected to these interrogatories on June 28, 2001.²

DFC/USPS-50

Interrogatory DFC/USPS-50 reads as follows:

Please refer to the data provided in USPS-LR-2. For 2000 and 2001, for all the plants that, according to the data, did not process outgoing First-Class Mail on holidays, please identify whether those plants sent their outgoing First-Class Mail to another plant for processing under an "Area Mail Processing" or consolidation plan and, if so, the plant to which they sent the mail.

In this proceeding, the Commission is exploring the adequacy of the Postal Service's current level of service on holidays.³ Adequacy of service is a difficult

¹ Douglas F. Carlson Interrogatories to the United States Postal Service (DFC/USPS-25-58), filed June 21, 2001.

² Objection of the United States Postal Service to Carlson Interrogatories DFC/USPS-25, 31, 40, 50 and 53, filed June 28, 2001 ("Objection").

³ Douglas F. Carlson Notice of Filing of Amended Pages of Complaint at ¶ 20, filed March 29, 2001; see also Order No. 1312 at 2, which granted my motion to amend my complaint.

concept to measure. The Postal Service's objection asserts that holiday cancellation volumes

shed no light on whether mail is in the system on holidays because mailers simply find it more convenient to deposit it then, or because they truly want the Postal Service to undertake whatever extraordinary efforts might be necessary to move the mail on the holiday.

Objection at 5. This statement, of course, sets up a false dilemma. Perhaps the conclusion that is most likely when mail is found in the system on a holiday is that customers simply want that mail to be processed and delivered as soon as possible. In addition, when large numbers of businesses are open on a non-widely observed holiday such as Columbus Day, businesses may affirmatively expect that the Postal Service will provide them with outgoing mail service, too. Ultimately, we will never know for certain the actual expectation of every mailer who deposited every piece of mail in a collection box on a holiday. Consequently, the Commission and participants will need to draw logical and reasonable inferences from available data. I intend to argue that high cancellation volumes on holidays indicate a need for outgoing mail processing, and I am developing evidence to support this argument. In short, cancellation volume may be a reasonable proxy for customer need.

The question of whether the Postal Service is providing adequate holiday mail service consists of at least two parts. First, do customers need the service? Second, is the Postal Service providing it? The Postal Service potentially is not providing adequate service if customers need the service, but the Postal Service is not providing it. Cancellation volumes may constitute evidence of the need for the service. The Postal Service has provided part of the answer by submitting cancellation volumes as percentages of average daily volumes.⁴ The next question is whether the Postal Service is providing the holiday mail service.

In USPS-LR-2, the Postal Service provided data indicating which plants processed outgoing mail on each holiday between 1992 and 2001. However, on some

⁴ Disclosure of actual volumes is the subject of a motion to compel production of this data. See Douglas F. Carlson Motion to Compel the United States Postal Service to Respond to Interrogatory DFC/USPS-10(b), filed June 21, 2001.

holidays, as on some Saturdays, the Postal Service employs consolidation, or “area mail processing,” plans. That is, post offices in the service area of plant A perform typical collection and dispatching operations. However, when plant A receives the mail, plant A transports the mail to plant B. Thus, plant B processes mail collected in the service areas of plant A and plant B, but the Postal Service presumably reduces expenses by operating only plant B. In practice, plant B might even accept mail from more than one other plant. See, e.g., USPS-LR-3, August 10, 1994, memo concerning operations on Labor Day weekend in the Pacific Area.

The unfortunate side effect of consolidation plans is that participants and the Commission are unable to determine from the data in USPS-LR-2 whether customers in the service area of a plant that did not process outgoing mail on a particular holiday still received outgoing mail service, albeit by way of a consolidation plan. For example, on Martin Luther King Jr.’s Birthday in 2001, the plant in Brooklyn, New York, did not process outgoing mail, but the Queens, New York, plant did. I am unable to determine from these data whether customers in Brooklyn received holiday service on MLK’s Birthday in 2001.

In its objection, the Postal Service seems to suggest that one can make some inferences about holiday consolidation plans by examining whether a plant’s drop to a volume of zero on a particular holiday was accompanied by a material increase in the volume at a nearby plant. See Objection at 5. While this hypothesis is logical, it fails to explain service levels in Brooklyn. The most-recent year in which the Brooklyn and Queens plants both processed outgoing mail on MLK’s Birthday was 1999. In 1999, the Brooklyn P&DC processed 51.4 percent of its average daily volume, and the Queens P&DC processed 55.6 percent of its average daily volume. In 2000, only the Queens P&DC reported data, and the number was 45.4 percent of its average daily volume. In 2001, the number was 44.0 percent. These data perhaps suggest that customers in Brooklyn did not receive outgoing mail service on MLK’s Birthday in 2000 and 2001. However, another plausible explanation is that the Postal Service consolidated mail-processing operations into Queens, and a curtailed scope of collections on this holiday⁵

⁵ Collections can be curtailed by collecting fewer boxes or collecting boxes at an earlier hour.

in both Brooklyn and Queens accounted for the drop in Queens' cancellation volume from 55.6 percent in 1999 (under no consolidation plan) to 45.4 percent in 2000 (under a consolidation plan). Clearly, to conclude one way or the other about the mail service that customers in Brooklyn received on MLK's Birthday in 2000 and 2001 would be pure speculation.

This example underscores the need to know information on consolidation plans. Indeed, one can argue quite convincingly that postal customers in Brooklyn need outgoing mail service on MLK's Birthday, and whether they are receiving it is a key issue as to the adequacy of their mail service. After all, when the Brooklyn P&DC processed mail on MLK's Birthday in 1999, the volume was 51.4 percent of the average daily volume. In 1998, the volume was 61.0 percent. These volumes originated despite the fact that the Postal Service did not even inform customers via collection-box labels that holiday service was available. If the Postal Service now does not provide outgoing mail service in Brooklyn on MLK's Birthday, the Postal Service would be allowing two days to pass without providing outgoing mail service while a substantial volume of mail — hundreds of thousands of pieces — was waiting to be processed. This service level arguably would not be adequate.

The preceding discussion and example demonstrate why I must obtain information on holiday consolidation plans if I am to have a reasonable opportunity to develop testimony on the adequacy of current holiday service levels. I do not want to assert that certain holiday service levels are not adequate when they may, in fact, be adequate. Stated differently, I need to be able to support statements that I make in my testimony, particularly when the Postal Service controls the information that could be used to rebut them. Thus, the Postal Service seemingly has three options. First, the Postal Service can provide the information. Second, the Postal Service can agree not to challenge certain factual assertions that I make in my testimony. Or third, the Postal Service can consult with me to develop an admission that the Postal Service is willing to make concerning the scope of the inadequacy of current holiday service levels. If the admission were sufficient, I would withdraw my motion to compel.

In its objection, the Postal Service suggests that the proper objective of this line of discovery is to develop "historical volume level data." See *Id.* at 5. The Postal Service tries to support this argument by asserting that the objective is not to "paint as full and complete a picture of holiday processing at the level of individual facilities over history as humanly possible[.]" *Id.* at 4. Of course, no one asserted that it was. Historical volume data are useful for confirming that the Postal Service has been eliminating holiday mail service in recent years without first having obtained an advisory opinion from the Commission. However, as I have amply explained already, the actual, current level of holiday mail service that customers receive is relevant to the adequacy of holiday mail service. Interrogatory DFC/USPS-50 is designed to elicit accurate information on current holiday service levels.

Other data that the Postal Service has provided so far explain holiday processing trends, both by holiday and over time. I do not disagree with this aspect of the Postal Service's objection. See *Id.* However, this proceeding is not limited to examining historical holiday volume levels. Rather, the issue of adequacy of service is grounded in present operations, and consolidation data will be necessary before the data provided in USPS-LR-2 will explain the level of outgoing mail service that the Postal Service provides on holidays.

In its objection, the Postal Service claims undue burden, asserting that area and district officials

would have to search their files and communicate the results of those searches back up the line. While the local search effort would not be trivial, perhaps one or two hours per office, the major effort involved would be coordinating the communication aspect. Many days of work, over a period of at least several weeks, would be involved at the Headquarters level in developing a comprehensive response.

Objection at 4. The Postal Service's estimation of the effort involved in coordinating the communication effort seems to be excessive. First, I am requesting the information for 2000 and 2001 only. Second, the Postal Service should be able to construct a spreadsheet for each plant on each holiday and, upon receiving each response from the

field, enter the information into the spreadsheet to indicate whether consolidation plans were in effect for that plant.

This dispute over the burden in obtaining information on consolidation plans on holidays raises an interesting, fundamental, and, ultimately, troubling question. I am moving to compel production of this information because I am assuming that the Postal Service is not ready to admit that it is not providing adequate mail service on holidays. Given the difficulty that apparently will be involved for the Postal Service to gather information about holiday consolidation plans, one has to wonder how the Postal Service can be so sure that it is providing adequate mail service on holidays if it does not even know the extent to which postal customers receive outgoing mail service on holidays. The non-widely observed holidays are particularly interesting because the data in USPS-LR-2 confirm substantial cancellation volumes on holidays such as MLK's Birthday, Columbus Day, and others. These cancellation volumes are evidence of a need for holiday mail service. If customers are not receiving service in some areas on these holidays, they arguably are not receiving adequate holiday mail service. For example, customers in Maine appear to receive no outgoing mail service on either of these two holidays as of 2000, but at least some of them received the service in previous years.

The Postal Service's objection to DFC/USPS-50 suggests that the Postal Service does not really know whether it is providing adequate service or not, unless its position is simply that whatever it is doing is fine, adequate, and beyond question. If the effort that the Postal Service, Commission, and participants are expending in this proceeding is destined to have a substantial effect on ensuring that postal customers receive adequate holiday mail service, I submit that exploration of the level of service that the Postal Service presently is providing on holidays will be necessary before any conclusion can be drawn about the adequacy of current holiday service levels. Information on consolidation plans is crucial to determining current holiday service levels, and the presiding officer should direct the Postal Service to respond to DFC/USPS-50.

DFC/USPS-53

Interrogatory DFC/USPS-53 reads as follows:

Please provide all reports, studies, literature, and other documents in the possession of Postal Service marketing staff or other staff that describe, either in specific terms or general conceptual terms, the number of times that an advertising or other message should run, and the frequency with which it should run, in order to reach particular or desired percentages of the audience, as well as the number of media outlets in which an advertising message should run in order to reach particular or desired percentages of the population.

I move to compel the Postal Service to answer all portions of this interrogatory except the request for literature.

A major issue in this complaint proceeding is the adequacy of the notice to the public that the Postal Service provides before performing early collections⁶ on the eve of a holiday. Order No. 1307 explicitly stated that this complaint proceeding will attempt to resolve this issue: "The first issue that the Commission would like to resolve is whether postal customers are adequately informed when the Postal Service temporarily or permanently modifies its holiday and holiday eve collection and mail processing schedules." Order No. 1307 at 16.

The term "adequately informed" includes the issue of whether customers are informed at all. In other words, did the Postal Service's notifications actually reach customers? When the Postal Service performs early collections on the eve of a holiday, the operations policy typically requires district managers or their designees to "ensure that the public is notified in advance of this change."⁷ For the early collections on Monday, July 3, 2000, Postal Service headquarters dismissed the need to post notices on individual collection boxes.⁸ The central question, then, is whether the Postal Service adequately informed customers.

⁶ By "early collections," I am referring to final collections that are performed from collection boxes prior to the posted final collection time for the day of the week that corresponds to the eve of the holiday.

⁷ USPS-LR-1, Memo from John E. Potter to Managers, Operations Support (Area), June 23, 2000; see also Attachment to Response to DFC/USPS-17, Memo from Lizbeth J. Dobbins to Vice Presidents, Area Operations, and Manager, Capital Metro Operations, November 16, 1999.

⁸ USPS-LR-1, Memo from John E. Potter to Managers, Operations Support (Area), June 23, 2000.

Postal customers who reside in a different city or even state may, at any given time, use any collection box to deposit their mail. Media announcements in the affected area probably would not reach these customers. In addition, media announcements *in* the affected area may not reach a significant, let alone a sufficient, percentage of postal customers. Arguably, Postal Service publicity concerning early collections should reach a substantial majority of the customers living in the affected area before one could even *begin* to assert that these announcements constituted adequate notification to the public. Even then, it is far from clear that notice that does not reach all customers could be considered sufficient.

The question, then, is which kind of media strategy would be necessary to communicate information concerning early collections to all customers, or at least a substantial majority of customers, living in the affected area? This interrogatory asks the Postal Service to provide all reports studies, and other documents⁹ in the possession of Postal Service marketing staff or other staff that describe the number of times that an advertising or other message should run, and the frequency with which it should run, in order to reach particular or desired percentages of the audience, as well as the number of media outlets in which an advertising message should run in order to reach particular or desired percentages of the population. The underlying principle is the observation that a single announcement in a single media source is not likely to reach a substantial portion of the population. Moreover, often people need to hear an announcement more than once in the same media outlet before it registers with them. And certainly a message must be broadcast more than once on a television or radio station to have a reasonable chance of being heard even once by a substantial percentage of the audience. This interrogatory clearly is probative of precisely the issue that Order No. 1307 seeks to explore: Are customers adequately informed of early collections on eves of holidays? Stated differently, is the media strategy that districts employ likely to reach anywhere close to a substantial majority of postal customers? The Postal Service may possess scientific evidence probative of this issue.

⁹ The original interrogatory requests literature as well, but I am not moving to compel a response to this portion of the interrogatory.

As an example, the New York District collected boxes according to a Saturday collection schedule on Monday, July 3, 2000. DFC/USPS-35(g). The New York District includes Manhattan, one of the most densely populated areas in the country. On Saturday, July 1, 2001, the New York District published a notice in the New York *Daily News* announcing that collections on Monday, July 3, 2000, would be conducted according to the Saturday schedule. *Id.* Was this single newspaper announcement likely to have reached a substantial, let alone sufficient, percentage of customers who may have used collection boxes in the New York District on Monday, July 3, 2000? The Postal Service may possess evidence relevant to the answer to this question.

The Postal Service objects on the grounds that “the relevance of advertising practices to this case is not apparent.” Objection at 6. The Postal Service adds that communications concerning holiday service changes have a purpose “very different from the purposes of advertising, which might include, for example, promotion of brand awareness or promotion of product awareness.” *Id.* In reality, while some of the purposes of advertising may be different from the purpose of communicating informational messages to the public, both share an important goal of communicating certain information to the public so that the public will understand and retain this information. The Postal Service is free to challenge any testimony or other arguments in this proceeding that rely on a parallel between advertising communications and informational announcements, but this challenge should be directed at the *weight* that such testimony or arguments should receive, not at the relevance. Advertising evidence is probative of the effectiveness of the Postal Service’s communication strategy for announcing holiday service changes. At a later time, the Postal Service can argue that the Commission should not afford this evidence significant weight.

The Postal Service’s objection glosses over another important fact. This interrogatory does not focus exclusively on advertising messages or marketing staff. Rather, it asks for reports, studies, and other documents that Postal Service marketing staff *or other staff* possess. In addition, the interrogatory requests information related to advertising *or other messages*. The interrogatory is not focused specifically on advertising. For all we know, the Postal Service possesses scientific information

explaining ways effectively to communicate service-related announcements — or even, specifically, *postal* information — to the public. Perhaps such investigations would have been performed in the planning process for implementing rate changes.

Ultimately, if the Postal Service possesses information responsive to this interrogatory, the Postal Service, as an institution, is aware of this information. A relevant question, then, is whether field offices are disseminating information to the public concerning early collections on the eves of holidays in a manner that, according to information and research of which the Postal Service is aware, should cause a substantial percentage of postal customers to understand that the Postal Service will be performing early collections. The consistency of actual communications strategies with the effective strategies that information responsive to this interrogatory would recommend goes to the heart of answering the question of whether the Postal Service adequately notifies customers before performing early collections on eves of holidays.

Finally, the Postal Service asserts that I have a burden to locate and sponsor information on this topic and that I should not be asking the Postal Service for the information. See Objection at 6. In reality, if the Postal Service, as an institution, is aware of information responsive to this interrogatory, I am entitled to explore the extent to which field offices' communication strategies are consistent with the communications strategies that information responsive to this interrogatory would recommend. I do not have a burden to locate and sponsor information on this topic if the Postal Service possesses the information. In Docket No. R2000-1, the presiding officer rejected a similar Postal Service contention. In that proceeding, the Postal Service accused me of conduct bordering on abuse of process because I submitted interrogatories that requested information that, the Postal Service asserted, was publicly available. POR R2000-1/28 at 5.¹⁰ In granting my motion to compel the Postal Service to answer my interrogatories, the presiding officer explained:

Because an answer is available in a published source does not mean that a participant has readily available access to that source or even knows what source to consult. This is not a valid basis for objection. The Postal

¹⁰POR R2000-1/28, filed April 3, 2000.

Service, being most familiar with Postal Service documentation and information, is the logical party to ask. The Postal Service also states that Carlson is aware of and has access to these sources. This statement implies that all resources available to a participant must be examined prior to filing an interrogatory. No such rule exists. Generally, an inquiry will not be made into what alternate resources might be available to a participant submitting a discovery request, and therefore this cannot be used as a basis for an objection.

Id.

In that proceeding, the Postal Service was asserting that the information in question was publicly available. In contrast, DFC/USPS-53 requests information in the possession of the Postal Service that may not be publicly available. Indeed, the Commission noted in Order No. 1312 that complainants may find themselves at a "disadvantage" in sustaining a complaint "because the Postal Service controls the information necessary to sustain a formal complaint[.]" Order No. 1312 at 2. Moreover, "discovery is entirely appropriate where the Postal Service is in control of the facts related to the complaint." *Id.* at 7, fn. 10. The Postal Service's position in objecting to DFC/USPS-53 is even weaker than the position that the presiding officer rejected in Docket No. R2000-1. The possible public availability of some of the information that I have requested is no grounds for objection. Moreover, some of the information probably is not publicly available.

In sum, DFC/USPS-53 requests information relevant to evaluating the adequacy of the notice that the Postal Service provides to the public concerning early collections on eves of holiday. Therefore, I move to compel the Postal Service to respond to DFC/USPS-53 (except for the request for "literature").

Respectfully submitted,

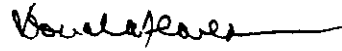


Dated: July 7, 2001

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

July 7, 2001
Santa Cruz, California